

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OSCAR STILLEY

PLAINTIFF

v.

CIVIL NO. 3:19cv6-HTW-LRA

WARDEN RIVERS, ET AL.

DEFENDANTS

**REPLY IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

Defendant United States of America ("the government") submits this reply in support of its Motion to Dismiss. *See* Dkt. No. 25.

I. DISCUSSION

Relevant here, Plaintiff Oscar Stilley ("Stilley" or "Plaintiff") filed Federal Tort Claims Act ("FTCA") claims against the government for its alleged negligence. *See* Dkt. No. 1. Stilley never filed an administrative tort claim based on the negligence alleged in his complaint. *See* Dkt. No. 25-1 (Declaration of Joshua Robles). Therefore, the government moved to dismiss Stilley's FTCA claims for failure to exhaust such claims

administratively, as is required before the government waives its sovereign immunity and before this Court obtains subject-matter jurisdiction over Stilley's claims. *See* Dkt. No. 26 (discussing non-exhaustion argument).

Stilley responded to the government's motion. *See* Dkt. Nos. 31; 32. After stripping away the unfounded conspiracy theories and unsupported accusations, Stilley's response centers on whether he filed this lawsuit within six months of receiving a right-to-sue letter. *See, e.g.*, Dkt. No. 31 ¶¶ 15-16; Dkt. No. 32, at 1-3. This assertion is irrelevant.

The government's motion to dismiss is not based upon the timeliness or untimeliness of Stilley's complaint. *See generally* Dkt. No. 26. The government's motion is based on this Court's lack of subject-matter jurisdiction over the FTCA claims because Stilley never exhausted such claims administratively. *See* Dkt. No. 26, at 5-7 (discussing non-exhaustion argument).

As the plaintiff, Stilley has the burden to show administrative exhaustion¹ and subject-matter jurisdiction.² He has not met either burden. Because Stilley failed to file and exhaust his administrative claims, the government retains its sovereign immunity. Consequently, Plaintiff's claims against the government (i.e., the United States of America) must be dismissed for lack of subject-matter jurisdiction. *See Fed. R. Civ. P. 12(b)(1).*

II. CONCLUSION

For the reasons stated in its Motion to Dismiss and supporting Memorandum Brief, this Court must dismiss Plaintiff's FTCA claims against the United States of America for lack of subject-matter jurisdiction.

¹ See also *Lewis v. U.S. Dep't of Hous. & Urban Dev.*, No. 3:12-CV-2540-D, 2013 WL 2367786, at *2 (N.D. Tex. May 30, 2013) ("Because exhaustion is a jurisdictional prerequisite to bringing a claim for money damages against the United States under the FTCA, [the p]laintiff has the burden of proof on this issue." (citing *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001))).

² See *Pride v. FEMA*, 1:11-cv-22, 2012 WL 4051984, at *1 (S.D. Miss. Sept. 13, 2012). ("The burden on a Rule 12(b)(1) motion is on the party asserting jurisdiction." (citing *Ramming*, 281 F.3d at 161)); see also *Corley v. United States*, No. 5:08cv177, 2008 WL 5412422, at *2 (S.D. Miss. Dec. 23, 2008) ("Plaintiff, as the party asserting jurisdiction, bears the burden of proof for a motion to dismiss under Rule 12(b)(1)." (citing *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001)))).

Respectfully submitted,

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/s/ Jennifer Case

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Dated: April 6, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the Electronic Case Filing system (ECF). I certify that a true copy of the foregoing has been mailed via United States Mail, postage prepaid, to the *pro se* plaintiff as follows:

Pro Se Plaintiff

Oscar Stilley
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Dated: April 6, 2020

/s/ Jennifer Case
JENNIFER CASE
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